

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHINOBU KAWASAKI ET AL.

Appeal No. 96-1599
Application 07/968,421¹

HEARD: Jan. 12, 1998

Before COHEN, ABRAMS and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1
through 6. Claims 7 through 10, the only other claims pending

¹Application for patent filed October 29, 1992.

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in the application, stand withdrawn from consideration pursuant to 37 CFR § 1.142(b) as being directed to a non-elected invention.

The subject matter on appeal relates to a method of transporting along an assembly line a mixed array of different workpieces. Claim 1 is illustrative and reads as follows:

1. A method of transporting workpieces in an assembly line in which at least two kinds of workpieces are transported by mixture, wherein said kinds of said workpieces are transported by self-propelling transporting members, and at least three transporting members are sent off from a starting end of said assembly line, said method comprising the steps of:

determining a transporting pitch to be established, between adjacent transporting members, for each of said kinds of workpieces based on a difference in the number of assembling man-hours required for each thereof; and

controlling a timing for establishing a transporting pitch between said adjacent transporting members consistent with a pre-set transporting pitch by starting each of said transporting members off from the starting end of said assembly line such that a pitch between said adjacent transporting members becomes equal to that which is set for a workpiece to be transported by a preceding one of said adjacent transporting members.

The reference relied upon by the examiner as evidence of obviousness is:

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Hatano, Japanese Patent Document² 3-228531 Oct. 09, 1991

Claims 1 through 6 stand rejected under 35 U.S.C. § 103
as being unpatentable over Hatano.

Hatano discloses an automobile assembly line control
system. As described in this reference,

an assembly line in the assembly line control system
of the present invention, besides including
processes (such as sub-assembly processes) necessary
to initial setup work, also has junction and
branching in the line itself; a workpiece position
estimation device that, based on slow sequence data
for each workpiece collected in a specified position
on the line, passage timing data of each workpiece,
and process plan data, estimates the position of
each workpiece on the line; an arrival time
calculation device that, based on the position of
each workpiece on the line estimated by the
aforesaid workpiece position estimation device,
calculates the arrival time of each workpiece at a
process in which initial setup work is necessary;
and an instruction timing determination device that,
based on the arrival time of each workpiece as
calculated by the aforesaid arrival time calculation
device, determines the timing of the operation start
instruction for the initial setup work, the part
supply instructions, etc. in accordance with each
workpiece.

² The record contains an English language translation of
this reference, prepared on behalf of the Patent and Trademark
Office, and indicates that a copy was sent to the appellants
with the final rejection (see footnote 1 on page 6 of the
appellants' brief, Paper No. 26).

. . .

By means of the workpiece position estimation device, the position of each workpiece on the line is estimated based on the flow sequence data for each workpiece collected at specified positions on the line, workpiece passage timing data, and process plan data. Then, based on the positions of each workpiece on the line, which have been estimated by this workpiece position estimation device, the arrival time of each workpiece to a process requiring initial setup work is calculated by means of an arrival time calculation device. The timing of operation start instructions, part supply instructions, etc. for the initial setup work corresponding to each workpiece is then determined by an instruction timing determination device based on the arrival time of each workpiece thus calculated, and the operation start instructions, part supply instructions, etc.

are performed for the initial setup processing in the timing determined thereby [translation, pages 5 and 6].

Given the disclosure of Hatano, the examiner contends that "one having ordinary skill in the art would have found it obvious to determine any obvious operation starting command in accordance with any obvious parameter of the pieces to be assembled" (answer, Paper No. 27, page 2). More specifically, the examiner states that

Hatano fails to literally disclose that a preset

transporting pitch between adjacent transporting members is established. However, one having ordinary skill in the assembly line art is deemed to realize that there is an optimum transporting pitch between adjacent transporting members which will maximize the efficiency of the assembly line. Thus, one having ordinary skill in the art would have found it obvious to achieve this transporting pitch so that the assembly line could be operated most efficiently, since one skilled in the assembly line art strives for efficiency. Consequently, one having ordinary skill in the art would have found it obvious to modify Hatano by sending the transporting members off from the start line in accordance with the assembly man hours required for the pieces to be assembled such that the most efficient transporting pitch is attained [answer, page 3].

Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may

not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. Id.

In the present case, the examiner concedes that Hatano

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does not teach the particular method steps recited in claim 1. The rationale offered by the examiner that these steps nonetheless would have been obvious to one of ordinary skill in the art seeking improved efficiency amounts to an exercise in speculation, unfounded assumptions and hindsight reconstruction. It goes without saying that a person of ordinary skill in the art would have viewed increased efficiency to be a desirable objective. There is nothing, however, in the Hatano disclosure or in the examiner's explanation of the rejection which provides the factual basis necessary to support a conclusion that such a person would have found the particular method steps recited in claim 1 to be obvious for this or any other reason.

In this light, the examiner's conclusion of obviousness with respect to the subject matter recited in claim 1, and in claims 2 through 6 which depend therefrom, is fundamentally flawed.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103

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rejection of these claims.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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